

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BENJAMIN TOSCANO,

No. C-14-0587 EMC (pr)

Plaintiff,

ORDER OF DISMISSAL

v.

G. D. LEWIS, Warden; *et al.*,

Defendants.

Benjamin K. Toscano an inmate at Corcoran State Prison, filed this *pro se* civil rights action under 42 U.S.C. § 1983 and applied to proceed *in forma pauperis*. His complaint is now before the Court for review under 28 U.S.C. § 1915A.

The Court must dismiss a prisoner's complaint if it determines that the action "is frivolous [or] malicious." 28 U.S.C. § 1915A(b)(1). (Section § 1915A(b)(1) is the prisoner analog to 28 U.S.C. § 1915(e), which allows the court to dismiss any pauper's complaint if it is, among other things, "frivolous or malicious.") The district court may dismiss under § 1915 "a complaint 'that merely repeats pending or previously litigated claims.'" *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. § 1915 as malicious); *Van Meter v. Morgan*, 518 F.2d 366 (8th Cir. 1975) (dismissal of complaint as frivolous was not an abuse of discretion where plaintiff had filed other similar complaints).

The complaint in this action repeats claims that Mr. Toscano in an action he commenced in 2012, *Toscano v. Lewis*, Case No. C 12-5893 EMC. (The 2012 action included additional claims

1 that are still being litigated, but the claims that are asserted in the present action are among the
2 claims that the Court dismissed when they were presented in the 2012 action.) In the present action,
3 Mr. Toscano asserts claims based on the alleged delayed disclosure of information to him until 2010
4 that he had been deemed “no good” by certain prison gangs and based on his 2007 gang validation.
5 *See* Docket # 1 at 6-10. The allegations repeat the allegations from the 2012 action about the alleged
6 delayed disclosure of information and the gang validation. *See Toscano v. Lewis*, No. C 12-5893
7 EMC, Docket # 19 at 1-3. In the 2012 action, the Court dismissed the claims pertaining to the
8 alleged delayed disclosure of information and the gang validation for failure to state a claim upon
9 which relief may be granted. *See id.* at 7-10. The Court explained its reasoning for the dismissal.
10 *Id.* Mr. Toscano filed two motions to reinstate the dismissed claims and defendants in the 2012
11 action, and the Court denied his motions. *See Toscano v. Lewis*, No. C 12-5893 EMC, Docket # 51
12 at 2. He then filed a third motion to reinstate the dismissed claims and defendants in the 2012
13 action, and the Court denied that motion also. *See Toscano v. Lewis*, No. C 12-5893 EMC, Docket #
14 87 at 1. Undeterred by the Court’s directions to stop filing repetitious motions, Mr. Toscano filed a
15 fourth motion for reinstatement of the dismissed claims, and the Court denied that motion as
16 frivolous. *See Toscano v. Lewis*, No. C 12-5893 EMC, Docket # 119 at 2.

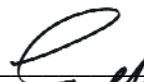
17 This action is frivolous because it merely repeats claims that were made in another action
18 and were adjudicated against Mr. Toscano. *See Cato*, 70 F.3d at 1105 n.2. Therefore, this action is
19 **DISMISSED** because it is frivolous.

20 Mr. Toscano’s request for an update on the status of this case is **GRANTED**. (Docket # 6.)
21 The status is that this order dismisses the action.

22 The Clerk shall close the file.

23
24 IT IS SO ORDERED.

25
26 Dated: September 3, 2014

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28 
EDWARD M. CHEN
United States District Judge